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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

DWAYNE BENTON,

Defendant and Appellant.

C085340

(Super. Ct. No. 16FE022970)

This is an appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

FACTUAL AND PROCEDURAL BACKGROUND

We briefly recount the facts and procedural history in accordance with *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.

About 4:30 a.m. on December 6, 2016, defendant Dwayne Benton, using a metal cane, hit a man sleeping on the ground, causing the victim to suffer lacerations on his head which required three staples. The victim did not know why defendant had struck him. Defendant claimed the victim had stolen medication from him the previous day and used a racial slur against him several times in the past.

A complaint charged defendant with assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)).¹ It was further alleged that defendant had two prior strike convictions, a 2000 attempted robbery and a 1982 robbery (§§ 667, subds. (b)-(i), 1170.12).

Defense counsel expressed a doubt as to defendant's competence to stand trial. The court suspended criminal proceedings and appointed Dr. Nakagawa to evaluate defendant.

After reviewing Dr. Nakagawa's report, the court declared defendant competent to stand trial and reinstated criminal proceedings.

After a preliminary hearing, the complaint was deemed an information. Thereafter, defendant entered a no contest plea to assault with a deadly weapon and admitted one strike prior, the 2000 attempted robbery, in exchange for a sentencing bid of six years and the dismissal of the other prior strike conviction.

At sentencing, defendant requested that the court strike the strike conviction he had admitted pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 and sought probation or no more than the low term. The court denied defendant's *Romero* request, noting defendant's "significant criminal history that started in 1978, and he was on at least two grants of misdemeanor probation when he committed the present offense." Defendant had committed several felony offenses in addition to the prior strike offense as well as many misdemeanor offenses, including assault and battery offenses. The court sentenced defendant to state prison for six years, calculated as follows: the midterm of three years for the offense, doubled for the strike prior.

Defendant appeals. He did not request a certificate of probable cause (§ 1237.5).

¹ Undesignated statutory references are to the Penal Code in effect at the time of the charged offenses.

WENDE REVIEW

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

/s/
MURRAY, J.

We concur:

/s/
BLEASE, Acting P. J.

/s/
RENNER, J.